



DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING SITE-SPECIFIC WATER QUALITY CRITERIA

LSA Document #06-181

Overview

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for an amendment to 327 IAC 2-1-8.9. This proposed rule is to be presented to the Water Pollution Control Board (board) on December 13, 2006, for consideration of final adoption.

Citations Affected

This rulemaking amends 327 IAC 2-1-8.9.

Affected Persons

The only permitted discharger affected by this rulemaking is the City of Indianapolis whose discharge from its Southport Wastewater Treatment Plant currently contains a site-specific cadmium limitation according to 327 IAC 2-1-8.9 for discharge into the West Fork of the White River from the Indianapolis Belmont Wastewater Treatment Plant outfall to the Marion-Johnson County line.

Reason(s) for the Rule

U.S. EPA has informed IDEM that it will not accept the site-specific criteria for cadmium applicable to the West Fork of the White River from the Indianapolis Belmont Wastewater Treatment Plant outfall to the Marion-Johnson county line that are listed in Table 8.9-1 of 327 IAC 2-1-8.9(g) because they were calculated without incorporating recent aquatic toxicity data for cadmium published by U.S. EPA. If these site-specific criteria for cadmium applicable to the West Fork of the White River from the Indianapolis Belmont Wastewater Treatment Plant outfall to the Marion-Johnson county line are not changed, then EPA will over-promulgate the state rule by initiating a rulemaking to place in Federal regulation cadmium criteria that the EPA determines to be acceptable. The criteria in Federal regulation then would be the applicable cadmium criteria for the

portion of the West Fork of the White River from the Indianapolis Belmont Wastewater Treatment Plant outfall to the Marion-Johnson county line.

Benefits of the Rule

Site-specific water quality criteria typically are requested by a discharger and apply to a specific portion of the waterbody that receives the discharger's wastewater. In this case, the City of Indianapolis had requested site-specific criteria for cadmium because of an industry that discharged to one of the Indianapolis POTWs. This industry has significantly reduced its discharge so cadmium is no longer at issue in the Indianapolis discharge. Since the site-specific criteria are no longer needed by Indianapolis, they could be deleted from 327 IAC 2-1-8.9. If the City of Indianapolis needs site-specific criteria for cadmium in the future, it could apply for them under 327 IAC 2-1-8.9. The City of Indianapolis believes that it no longer needs effluent limits for cadmium and that the next renewal of its Southport Wastewater Treatment Plant NPDES permit should require only monitoring for cadmium.

Description of the Rulemaking Project

This rulemaking is conducted under IC 13-14-9-8 that allows for a reduction of the number of public comment periods routinely required. In cases where the commissioner determines that there is no anticipated benefit from the first and second public comment periods, IDEM may forgo these comment periods and proceed directly to the public hearing and board meeting at which the draft rule is considered for preliminary adoption. Two (2) opportunities for public comment (at the public hearings prior to preliminary and final adoption of the rule) remain under this procedure. No workgroup was formed to develop this rule amendment because EPA has final approval authority over water quality criteria and has

determined that the site-specific criteria for cadmium applicable to the West Fork of the White River from the Indianapolis Belmont Wastewater Treatment Plant outfall to the Marion-Johnson county line, as listed in 327 IAC 2-1-8.9, are incorrect. These site-specific criteria can be deleted from 327 IAC 2-1-8.9 because the only affected discharger no longer needs the site-specific criteria limit in the discharge permit.

Scheduled Hearings

First Public Hearing: September 13, 2006, at the WPCB meeting held at the Indiana Government Center North Building, Indianapolis, Indiana.

Second Public Hearing: December 13, 2006, at the Indiana Department of Natural Resources, Jasonville Field Office, Jasonville, Indiana.

Consideration of Factors Outlined in Indiana Code 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- 6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:
 - (A) human, plant, animal, or aquatic life; or
 - (B) the reasonable enjoyment of life and property.

Consistency with Federal Requirements

The amendment to 327 IAC 2-1-8.9 is consistent with federal rules.

Rulemaking Process

Under IC 13-14-9-8, the first and second notice requirements including the associated comment periods are eliminated. The rulemaking begins with the "Findings and Determination of the Commissioner pursuant to IC 13-14-9-8 and Draft Rule" published in

the Indiana Register. This shortened rulemaking process is permissible if the commissioner determines that:

- (1) the rule constitutes:
 - (A) an adoption or incorporation by reference of a federal law, regulation, or rule that:
 - (i) is or will be applicable to Indiana; and
 - (ii) contains no amendments that have a substantive effect on the scope or intended application of the federal law or rule;
 - (B) a technical amendment with no substantive effect on an existing Indiana rule; or
 - (C) a substantive amendment to an existing Indiana rule, the primary and intended purpose of which is to clarify the existing rule; and
- (2) the rule is of such nature and scope that there is no reasonably anticipated benefit to the environment or the persons referred to in IC 13-14-9-7(a)(2) from:
 - (A) exposing the rule to diverse public comment under section IC 13-14-9-3 or IC 13-14-9-4;
 - (B) affording interested or affected parties the opportunity to be heard under IC 13-14-9-3 or IC 13-14-9-4; and
 - (C) affording interested or affected parties the opportunity to develop evidence in the record collected under IC 13-14-9-3 and IC 13-14-9-4.

Notice of the first hearing on the rule is also published in the Indiana Register. The Water Pollution Control Board holds the first meeting/hearing and public comments are heard. The proposed rule, also known as the draft rule as preliminarily adopted, is published in the Indiana Register after preliminary adoption. If the proposed rule is substantively different from the draft rule, a written comment period is required. After notice in the Indiana Register, the second public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule becomes effective 30 days after filing with the Legislative Services Agency.

IDEM Contact

Additional information regarding this rulemaking action can be obtained from Mary Ann Stevens, Rules Section, Office of Water Quality, (317) 232-8635 or technical information about water quality criteria from John Elliott Permits Branch, Office of Water Quality, (317) 233-0703, or (800) 451-6027 (in Indiana).